(25,811)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1918.

No. 145.

J. S. MULLEN, L. V. MULLEN, W. M. BONNER, AND WILL TROUT, PLAINTIFFS IN ERROR,

vs.

MALINDA PICKENS, FRANCES BELL, AND T. E. GLOVER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OKLAHOMA.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., DECEMBER 2, 1918.

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1 *Return to Writ.*

In obedience to the commands of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same.

In Witness Whereof, I hereunto subscribe my name, and affix the seal of said Supreme Court of Oklahoma, in the City of Oklahoma City, this 2 day of March, 1917.

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN,
Clerk Supreme Court of Oklahoma.

2 Filed in Supreme Court of Oklahoma Mar. 2, 1917. William M. Franklin, Clerk.

In the Supreme Court of the United States, Sitting at Washington, D. C.

No. 6020.

J. S. MULLEN et al, Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

THE UCITED STATES OF AMERICA, *ss:*

The President of the United States to Malinda Pickens, Frances Bell and T. E. Glover, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States at Washington, D. C., within thirty (30) days from the date hereof, pursuant to a writ of error filed in the office of the Clerk of the Supreme Court of the State of Oklahoma, wherein J. S. Mullen, L. V. Mullen, W. M. Bonner and Will Trout, are plaintiffs in error, and Malinda Pickens, Frances Bell and T. E. Glover, are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiffs in error, as in said writ of error mentioned, should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness the Chief Justice of the Supreme Court of the State of Oklahoma this 27 day of February, 1917.

J. F. SHARP,
Chief Justice.

Attest:

[Seal Supreme Court, State of Oklahoma.]

WM. M. FRANKLIN, *Clerk.*
By N. C. ORR, *Ass't.*

3 Filed in Supreme Court of Oklahoma Mar. 2, 1917. William M. Franklin, Clerk.

STATE OF OKLAHOMA,
County of Pittsburg:

I, Thad Conn, Sheriff of Pittsburg County, Oklahoma, do hereby certify that I received the within and foregoing citation and process for service on the defendants in error therein named, Malinda Perkins, Frances Bell, and T. E. Glover, upon the 1st day of March, 1917, and upon the 1st day of March, 1917, I served the same upon the said defendants in error and each of them in Pittsburg County, Oklahoma, by then and there delivering unto C. S. Arnold a full, true, correct and complete copy thereof, with all the indorsements thereon, he, the said C. S. Arnold being then and there attorney of record for the said defendants in error and each of them.

In testimony whereof, witness my hand this 1st day of March, 1917.

THAD CONN,
Sheriff of Pittsburg County, State of Oklahoma,
By E. T. GABBERT,
Deputy.

STATE OF OKLAHOMA,
County of Pittsburg:

I, E. T. Gabbert, being of lawful age and being first duly sworn, upon my oath say that I am deputy sheriff of Pittsburg County, Oklahoma, and that the statements and allegations in the above and foregoing return of service are true and correct.

E. T. GABBERT.

Subscribed and sworn to before me this 1st day of March, 1917.

[Seal of S. L. Nealon, Notary Public, Pittsburg County, Okla.]

S. L. NEALON,
Notary Public.

My commission expires Jan. 8th, 1919.

4 Filed in Supreme Court of Oklahoma Feb. 27, 1917. William M. Franklin, Clerk.

In the Supreme Court of the United States, Sitting at Washington, D. C.

No. —.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Petition for Writ of Error.

Plaintiffs in error, J. S. Mullen, L. V. Mullen, W. M. Bonner and Will Trout, complaining of the defendants in error, Malinda Pickens, Frances Bell and T. E. Glover, state:

That heretofore, to-wit, on the 11th day of March, 1913, the defendants in error, Malina Pickens and Frances Bell, filed their petition in the District Court of Grady County, Oklahoma, against Will Trout, J. S. Mullen, L. V. Mullen and W. M. Bonner, wherein in said petition it was alleged that Malinda Pickens and Frances Bell are enrolled as full-blood Choctaw Indians.

It was further alleged that the said Malinda Pickens and Frances Bell were the owners of the fee simple title and the equitable title in and to the following described lands, to-wit:

5 The North 5.33 acres of Lot No. 17 and the North 14.69 acres and the South East 10 acres of Lot No. 13 and the East 20 acres of Lot No. 14 in Section 30; and the South west quarter of the North west quarter of the North West quarter and the west half of the South west quarter of the North west quarter, and the Northwest quarter of the North west quarter of the Southwest quarter and the South half of the northwest Quarter of the Southwest quarter and the Southwest quarter of the Southwest quarter and the West half of the Southeast quarter of the Southwest quarter of Section 29; all in Township 5 North, Range 7 West of the Indian Base and Meridian containing 170.02 acres of land, according to the United States Government Survey thereof.

the same being lands allotted to Eliza Bell, deceased, who was the mother of Malinda Pickens and Frances Bell.

It was further alleged that Eliza Bell died February 12th, 1905, leaving as her sole surviving heirs at law Malinda Pickens and Frances Bell.

It was further alleged that the defendants in said suit unlawfully entered possession of said lands in September, 1910, and were unlawfully holding possession of said lands.

It was further alleged that on the 30th of October, 1912, the de-

fendants in said suit had recorded in the office of register of deeds of Grady County, Oklahoma, a warranty deed from Malinda Pickens to the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner, which said conveyance was recorded in Book 84, page 426, and that a copy of said deed was attached to such petition, and which deed shows to have been issued on the 23rd of September, 1905. And it was also alleged in said petition that the defendants had a certain affidavit of F. M. Adams recorded in the office of register of deeds in Book 72, page 104, and a copy of the affidavit was attached to the petition. It was then alleged that the deed executed by Malinda Pickens to the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonney did not convey the lands specifically described above, or any part thereof, nor did the affidavit convey any interest.

6 It was alleged then that both the conveyances were void, but that they constitute a cloud upon the title of the plaintiffs in the trial court.

There was a prayer for possession of the land and damages in the sum of One Thousand Dollars; and a further prayer for judgment cancelling the deed as a cloud upon plaintiffs' title.

The answer of the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner was, first, a general denial; second, the answer was made a cross-petition and in the cross petition it was alleged that the land sued for by plaintiffs is the land allotted in the name of Eliza Bell, deceased, in lieu of certain other lands which had theretofore been allotted in the name of Eliza Bell, deceased, by the regularly appointed administrator, and which said lands first selected in allotment were conveyed by warranty deed to the defendants in the trial court, J. S. Mullen, L. V. Mullen and W. M. Bonner, and for which said lands so conveyed the said defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner paid a valuable consideration therefor, and in said warranty deed so executed the following provision was in said conveyance:

"If for any reason the allotment of the said Eliza Bell, deceased, as described, be cancelled set aside and *and* held for naught, and afterwards be filed at any point in the Choctaw and Chickasaw Nation, then this deed and its warranties and covenants shall apply to said lands so hereinafter selected the same as if it were described in this instrument, and if it be necessary for another deed to be executed to the lands thereafter selected, then the grantors covenanted and warranted that they would execute such a deed."

7 It was further alleged in the cross petition that on the 23rd of September, 1905, the date of the execution of said warranty deed by the heirs of Eliza Bell, deceased, that the heirs were citizens of the United States and entitled to all the rights and privileges of such citizens, and that the heirs were unrestricted Indians, and that the lands described in said conveyance were unrestricted lands.

It was further alleged by said defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner that the lands first selected were lost in contest proceedings, and that the lands described in the plaintiffs' petition were selected in lieu of the lands described in the warranty deed of date September 23, 1905, and that by reason of the cove-

nants in said deed of conveyance, the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner were entitled to a conveyance from the heirs, conveying the lands described in the plaintiffs' petition. The prayer of the cross petition was that the plaintiffs take nothing, and that the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner have judgment decreeing the specific performance of their contract, of date September 23, 1905, and that their title to said lands be quieted, and that all conveyances legally affecting their title be cancelled and held for naught.

The defendants in the trial court T. E. Glover and Will Trout filed their answer admitting that Malinda Pickens and Frances Bell were the owners of the land, and admitted that they were allotted to Eliza Bell, deceased. So far as these defendants are concerned, they were simply there as tenants and they assert no title in themselves. Thereafter a demurrer was filed by the plaintiffs in the trial court,
8 which demurrer was sustained, and the defendants in the trial court electing to stand upon their answers, final judgment was entered in the trial court of Grady County on the 18th day of October, 1913, in favor of the plaintiffs in the trial court, and against J. S. Mullen, L. V. Mullen and W. M. Bonner, and to which exceptions were saved. Thereafter the cause was regularly appealed to the Supreme Court of the State of Oklahoma, and on the 29th day of February, 1916, the Supreme Court of the State of Oklahoma rendered its final judgment herein, whereby the judgment of the trial court of Grady County, Oklahoma, was affirmed.

The plaintiffs in error herein, J. S. Mullen, L. V. Mullen and W. M. Bonner would further respectfully represent and state unto this Honorable Court that in the trial of this cause in the District Court of Grady County, Oklahoma, and in the Supreme Court of the State of Oklahoma, and which said Supreme Court of the State of Oklahoma is the court of Last Resort in said State of Oklahoma, and that in the record and proceedings and transcript, to which a reference is here made, manifest error occurred and was committed by said Supreme Court of the State of Oklahoma, to the damage of these plaintiffs in error, whereof they feel themselves aggrieved.

Plaintiffs in error would further respectfully represent and state unto this Honorable Court that in the record and proceedings and the transcript it will appear that there was drawn in question a construction of the Supplemental Treaty between the Chickasaw and Choctaw Nations and the United States of America, Section 22 (32 Statutes at Large 641); and also a construction of what is commonly known as the "Atoka Agreement" of June 28, 1898, (30 Statutes at Large 495); also the Act of Congress of April 26, 1906, (— Statutes at Large —).

9 Plaintiffs in error would further represent and state to this Honorable Court that it was necessary to construe said Acts of Congress by the Supreme Court of the State of Oklahoma, in order to render the final decree and judgment that was rendered herein.

Wherefore, Your petitioners, feeling themselves aggrieved by said final judgment of the Supreme Court of the State of Oklahoma, appeal from said judgment, and the whole thereof, upon the reasons

specifically set out in the assignment of errors filed herewith, and pray the appeal may be allowed; that a writ of error be allowed and granted; that said final decree and judgment, all pleadings, mandate judgment, orders, transcript and other proceedings had in said cause may be transmitted to the Supreme Court of the United States, to the end that this Honorable Court may hear said cause anew, and that the judgment and decree of the Supreme Court of the State of Oklahoma be reversed, and that a decree may be made herein remanding said cause for further proceedings in the court below, or that such decree may be made as to this Honorable Court may seem just and proper.

H. A. LEDBETTER AND
F. M. ADAMS,
Attorneys for Plaintiffs in Error.

10 Filed in Supreme Court of Oklahoma Feb. 27, 1917. William M. Franklin, Clerk.

In the Supreme Court of the United States, Sitting at Washington, D. C.

No. —.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Assignment of Errors.

Plaintiffs in error J. S. Mullen, L. V. Mullen, and W. M. Bonner, complaining of the defendants in error, Malinda Pickens and Frances Bell, state:

That in the Supreme Court of the State of Oklahoma a final judgment and decree was rendered against these plaintiffs in error, and in favor of the defendants in error herein, and from which said judgment the plaintiffs in error have appealed to this Honorable Court; and a writ of error having been duly issued, signed by the United States District Clerk for the Western District of Oklahoma, and by the Honorable J. F. Sharp, Chief Justice of the Supreme Court of the State of Oklahoma;

Now, therefore, the premises considered, the plaintiffs in error, J. S. Mullen, L. V. Mullen and W. M. Bonner, assign as error of the Honorable Supreme Court of the State of Oklahoma the following:

11 First. The Supreme Court of the State of Oklahoma erred in its construction of Section 22 of the Act of Congress of 1902, ratified by treaty September 25, 1902 (32 Statutes at Large —), wherein said Supreme Court of the State of Oklahoma held that the deed executed by the defendants in error herein was insufficient to

convey the lands selected in lieu of the lands described in said conveyance, for that under said deed so executed and by reason of said Section 22 of the Act of Congress ratified September 25, 1902, the lands so selected in allotment were alienable and the heirs who inherited the said lands, and being the defendants in error herein, were unrestricted in their right of alienation of said lands, and under said conveyance so executed by said heirs, they, the said defendants in error, being citizens of the United States, without restraint as to this character of land, they, the said defendants in error, Malinda Pickens and Frances Bell, had a lawful right to convey any land that might be selected in lieu of the lands described in said conveyance, and that the said defendants in error had a right to contract to convey any lands that might have been selected in lieu of the lands described in said conveyance.

Second. The Supreme Court of the State of Oklahoma erred in holding that the defendants in error could not convey and could not contract to convey land not selected in allotment, although the said defendants in error are shown by the record herein to be citizens of the United States; and, although the record shows that the said defendants in error had selected their own allotments, for that, the lands involved in this controversy were lands inherited by the said defendants in error under said section 22 of said Act of Congress of September 25, 1902.

12 And these plaintiffs in error say that by said conveyance so executed by the defendants in error to these plaintiffs in error, the estate conveyed by them to these plaintiffs in error is, and was, an estate of expectancy.

Third. The Supreme Court of the State of Oklahoma erred in holding that the deed and contract to convey executed by the defendants in error to the plaintiffs in error herein were void.

For all of which reasons plaintiffs in error pray that this cause be reversed, and that they have all other relief to which they may be entitled.

H. A. LEDBETTER AND
F. M. ADAMS,
Attorneys for Plaintiffs in Error.

13 Filed in Supreme Court of Oklahoma Feb. 28, 1917. William M. Franklin, Clerk.

In the Supreme Court of the United States, Sitting at Washington, D. C.

No. —.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

The President of the United States of America to the Honorable J. F. Sharp, Chief Justice of the Supreme Court of the State of Oklahoma, and the Associate Justices of said Court, and to the Clerk of the Supreme Court of the State of Oklahoma, Greeting:

Because in the record of the proceedings as *was* in the rendition of the judgment of a proceeding which is in the Supreme Court of the State of Oklahoma, before you, being the highest Court of law and equity in which a decision can be had in said suit between J. S. Mullen, L. V. Mullen, W. M. Bonner and Will Trout, as plaintiffs in error, and Malinda Pickens and Frances Bell and T. E. Glover, as defendants in error, wherein a final decree and judgment was rendered in said cause in favor of the defendants in error, quieting the title to that portion of the allotment of Eliza Bell, deceased, in the defendants in error, designated and commonly known as the allotment of Eliza Bell, deceased, and cancelling of record the conveyances of the plaintiffs in error, who sought to derive their title from the said defendants in error herein, and adjudging that
14 these plaintiffs in error take nothing by said petition in error, and where in said judgment of the said Supreme Court of the State of Oklahoma there was drawn in question the construction of said Acts of Congress and certain Treaties between the Chickasaws and Choctaws and the United States, and by said judgment aforesaid of the said Supreme Court of the State of Oklahoma it was necessary for the Supreme Court of the State of Oklahoma to construe said Acts of Congress and Treaties aforesaid, in order to render judgment therein, and it appearing that manifest error has happened to the damage of the plaintiffs in error, as well as by their petition and assignments of error appears; and we being willing that the error, if any hath been committed, should be duly and speedily corrected, and full justice done between the parties in this behalf, do command that if judgment therein be given, that then under the seal distinctly and openly, you send a copy of the record of the proceedings aforesaid with all things concerning *to* them, duly authenticated and verified, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C., to the Supreme Court of the United States within

thirty (30) days of the date hereof; that said record of said proceedings aforesaid be inspected by the Supreme Court of the United States, and may cause further to be done therein to correct that error, what, of right and according to the laws and customs of the United States, should be done.

Witness the Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, this, the 28 day of February, 1917.

[Seal of the United States District Court, Western District of Oklahoma.]

ARNOLD C. DOLDE,
Clerk of the District Court of the United States for the Western District of Oklahoma.

Allowed:
J. F. SHARP,
Chief Justice.

15 Filed in Supreme Court of Oklahoma Feb. 27, 1917. William M. Franklin, Clerk.

In the Supreme Court of the United States, Sitting at Washington, D. C.

No. —.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Order Fixing Amount of Bond.

The bond to supersede the judgment rendered herein is hereby fixed at the sum of $1000.00 and which said bond is executed to Malinda Pickens and Frances Bell and T. E. Glover, defendants in error herein, in said amount and approved; the same to act as supersedeas this the 27 day of February, 1917.

J. F. SHARP,
Chief Justice of the Supreme Court of the State of Oklahoma.

Attest:

[Seal Supreme Court State of Oklahoma.]

W. M. FRANKLIN,
Clerk of the Supreme Court,
By N. C. ORR, *Ass't.*

16 Filed in Supreme Court of Oklahoma May 1, 1917. William M. Franklin, Clerk.

In the Supreme Court of the State of Oklahoma.

No. 6020.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Bond.

Know all men by these presents, That we, J. S. Mullen, as principal, and L. V. Mullen and E. Dunlap as sureties are held and firmly bound unto Malinda Pickens and Frances Bell, in the sum of One thousand dollars ($1000.00) to be paid to said obligees, their successors, assigns, heirs, executors or administrators, to the payment of which well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed and dated this 26th day of February, A. D. 1917.

Whereas, the above named plaintiffs in error hath prosecuted a writ of error to the Supreme Court of the United States to reverse a judgment rendered in the above entitled action by the Supreme Court of Oklahoma;

Now, Therefore, the condition of this obligation is such that if the above named plaintiffs in error shall prosecute said writ of error to effect, and answer all damages and costs if he fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and effect.

J. S. MULLEN et al., *Principal,*
By LEDBETTER & ADAMS,
His Attorneys.
J. S. MULLEN,
L. V. MULLEN,
E. DUNLAP, *Sureties.*

STATE OF OKLAHOMA,
County of Carter, ss:

L. V. Mullen and E. Dunlap being each first duly sworn, and upon oath state that they are each sureties on the above and
17 foregoing instrument, each for himself says, that he *is* worth more, than the sum of one thousand dollars, above all debts, liabilities, and exemptions allowed him by law, and each for himself says that he has property subject to execution of the value of more than one thousand dollars situated in the state of Oklahoma.

L. V. MULLEN.
E. DUNLAP.

Subscribed and sworn to before me this February 26, 1917.
[SEAL.] B. S. GARDENHIRE,
Notary Public.

My Commission expires 19 day of Nov. 1919.

I hereby approve the foregoing bond and sureties to operate as a supersedeas, this 1st day of March, A. D., 1917.
J. F. SHARP,
Chief Justice of the Supreme Court of Oklahoma.

18 Filed Jan. 24, 1914. W. H. L. Campbell, Clerk.

In the Supreme Court of the State of Oklahoma, at Oklahoma City.

No. 6020.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Petition in Error.

Filed Jan. 24, 1914. W. H. L. Campbell, Clerk.

Plaintiffs in Error, J. S. Mullen, L. V. Mullen, W. M. Bonner and Will Trout, complaining of the Defendants in Error, Malinda Pickens, Francis Bell and T. E. Glover, state that heretofore to wit, on the 18th day of October, 1913, in the District Court of Grady County, Oklahoma, the defendants in error, Francis Bell and Malinda Pickens, recovered a judgment against the above named plaintiffs in error and also against T. E. Glover, which judgment was for the possession of N. 5.33 acres of Lot 17 and N. 14.69 acres and S. E. 10 acres of Lot 13, and the E. 20 acres of Lot 14 of section 30 and S. W./4 N. W./4 N. W./4 and W./2 S. W./4 N. W./4 and N. W./4 N. W./4 S. W./4 and S./2 N. W./4 S. W./4 and S. W./4 S. W./4 and W./2 S. E./4 S. W./4 section 29, all in Township 5 North, Range 7 West of the Indian Base and Meridian and quieting title thereto in the said Francis Bell and Malinda Pickens and cancelling of record in the office of the Register of Deeds of Grady County, Oklahoma, certain conveyances in favor of the plaintiffs in error, J. S. Mullen, L. V. Mullen and W. M. Bonner, and for judgment for costs in their favor and against the plaintiffs in error, as well as the defendant in error T. E. Glover, the original case made and transcript of said proceedings being hereto attached, made a part hereof and marked exhibit "A," and these plaintiffs in error hereby make the said T. E. Glover, a party defendant in error, they being unauthorized to represent him as plaintiff in error, the said T. E. Glover being a person against whom judgment was entered in the trial court, and

these Plaintiffs in error ask that this proceeding be heard, as
19 though the — T. E. Glover was a plaintiff in error, and these plaintiffs in error say, there is error in said record, judgment and proceedings, for the following reasons, to wit:

First. The court erred in sustaining a demurrer to the answer and cross Petition of the plaintiffs in error, which was excepted to at the time.

Second. The judgment of the trial court is contrary to the law.

Third. The Court erred in rendering judgment against these plaintiffs in error, for the reason that the answer filed by them, showed that the said Francis Bell and Malinda Pickens had sold the land sued for by them to one R. H. Mitchell, which is shown in paragraph 5 of their said answer and cross petition, case made page 13.

Fourth. The Court erred in rendering judgment against these plaintiffs in error, without any testimony being offered to support the allegations of the petition of the defendants in error, which was excepted to by the plaintiffs in error at the time.

For all of which reasons, the plaintiffs in error pray for summons in error, and that upon hearing this cause be reversed, for all of which they will ever pray.

H. A. LEDBETTER,
Attorney for Plaintiffs in Error.

20 In the Supreme Court of the State of Oklahoma.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Appealed from the District Court of Grady County, State of Oklahoma.

Honorable Frank M. Baily, Trial Judge.

Appearances:

For Plaintiffs in Error: H. A. Ledbetter, Ardmore, Oklahoma.
For Defendants in Error: Kent V. Gay, McAlester, Oklahoma; C. S. Arnold and Bond & Melton, Chickasha, Oklahoma.

Case-made.

EXHIBIT "A."

Filed Dec. 19, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla.
Filed Jan. 24, 1914. W. H. L. Campbell, Clerk.

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And be it remembered that on the 11th day of March, 1913, the Plaintiffs Malinda Pickens and Francis Bell, filed in the office of the Clerk of the District Court of Grady County, Oklahoma, a Petition against the Defendants Will Trout, J. S. Mullen, L. V. Mullen, and W. M. Bonner, which said Petition of the Plaintiffs is in words and figures as follows, to-wit:

22 In the District Court of Grady County, State of Oklahoma.

MALINDA PICKENS & FRANCES BELL, Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN, and W. M. BONNER, Defendants.

Petition.

Comes now the Plaintiffs, Malinda Pickens and Frances Bell and complaining of and against the Defendants, Will Trout, J. S. Mullen, L. V. Mullen, and W. M. Bonner, respectfully represent and show to the Court:

1. That Plaintiffs, Malinda Pickens and Frances Bell, are enrolled as full blood Choctaw Indians and are residents of Pittsburg County, State of Oklahoma. That the defendant, Will Trout, resides in Grady County, Oklahoma; and that the Defendants J. S. Mullen, L. V. Mullen and W. M. Bonner, reside in Carter County, Oklahoma.

2. That Plaintiffs are the owners of the fee simple title and the equitable title in and to and are entitled to the immediate possession

of the following described real estate situate in Grady County, Oklahoma, to-wit:

The North 51.33 acres of Lot No. 17 and the North 14.69 acres and the South east 10 acres of Lot No. 13 and the East 20 acres of Lot No. 14 in section 30; and the South west quarter of the North west quarter of the North west quarter and the west half of the South west quarter of the North west quarter, and the north west quarter of the North west quarter of the South west quarter and the South half of the North West quarter of the South west quarter and the South west quarter of the South west quarter and the West half of the *of the* South east quarter of the South west quarter of Section 29; all in Township 5 North, Range 7 west of the Indian Base and Meridian, containing 170.02 acres of land, according to the United States Government Survey thereof.

The same being lands allotted to Eliza Bell deceased mother of Plaintiffs herein. The said Eliza Bell having died on February 12th, 1901, leaving surviving her as her sole heirs at law her two daughters, Malinda Pickens and Frances Bell, the Plaintiffs
23 herein.

3. That on or about the 9th day of September, 1910, the defendants unlawfully entered into the possession of the above described lands and now hold and ever since said date have unlawfully held possession thereof and have collected and converted to their own use and benefit the rents and revenues arising from said lands which Plaintiffs allege aggregate the sum of Five Hundred ($500.00) Dollars; and the Plaintiffs allege that because of the unlawful conversion of said rents and profits and because of the unlawful withholding of said lands they have been damaged in the sum of One Thousand ($1000.00) Dollars.

4. For further and other cause of action herein these plaintiffs allege that on the 30th day of October, 1912, the defendants had recorded in the office of the Register of Deeds for Grady County, Oklahoma, a warranty deed from Malinda Pickens to the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner, which is recorded in Volume 84 at page 426, a copy of which deed is hereto attached, marked Exhibit "A" and made a part hereof, which deed purports to have been executed on the 23rd day of September, 1905; and that on the same day, namely October 30th, 1912, the said defendants had recorded in the office of the Register of Deeds of Grady County, Oklahoma, an affidavit of F. M. Adams which purports to construe the deed aforesaid as conveying the lands first above described, which said affidavit is recorded at page 72 in Volume 104, Miscellaneous Records of Grady County, Oklahoma, a copy of which affidavit is hereto attached, marked Exhibit "B" and made a part hereof.

Plaintiffs further allege that said deed last above named does not convey the lands first above described or any interest therein,
24 nor does said affidavit convey or attempt to convey any interest in said lands, and as to said lands first above described both of said instruments are absolutely void; but by reason of the

recording of said instruments a cloud has been cast upon the title of these plaintiffs to said lands.

5. That the reasonable value of said lands is Two Thousand Five Hundred ($2,500.00) Dollars.

Wherefore, Premises considered, Plaintiffs pray that the defendants herein be summoned to appear and answer herein and that on final trial hereof Plaintiffs have judgment for the title and possession of said lands, for their damages in the sum of One Thousand ($1,000.00) Dollars; and they further pray that said instruments aforesaid be cancelled, set aside and annulled, and that all cloud cast upon plaintiff's title by reason thereof be removed; they further pray for costs of suit and for such other and further relief, both general and special, legal and equitable as they may show themselves entitled.

KENT V. GAY,
C. S. ARNOLD,
Attorneys for Plaintiff.

Exhibit "A" attached to the foregoing Petition, being as follows, to-wit:

EXHIBIT A."

UNITED STATES OF AMERICA,
Central District, Indian Territory:

Know all men by these presents: That I Malinda Pickens, a citizen by blood of the Choctaw Nation, and being the daughter of Eliza Bell, deceased, and being an adult, for and in consideration of the sum of Five Hundred dollars to me cash in hand paid, the receipt of which is hereby acknowledged, I hereby sell, transfer, and convey and by these presents, do sell, transfer and convey unto J. S. Mullen and unto L. V. Mullen and M. Bonner, of Ardmore, Indian Territory, their heirs, executors and administrators and assigns the following described land, together with all the improvements thereon situated, to-wit:

S. E./4 of N. W./4 of N. W./4 of Sec. 34 Tp. 4 S. R. 2 W. and N. E./4 of S. W./4 of N. W./4 of Sec. 32 Tp. 2S. R. 2 W. Less 2.50 acres for town of Graham, the S. W./4 of S. E./4 of Sec. 31; the S./2 of N. W./4 of S. E./4 of Sec. 31; the N. E./4 of N. W./4 of S. E./4 of Sec. 31 Tp. 2 S. R. 1 E.; the N. 1/2 of N. E./4 of N. E./4 of Sec. 6; the S. W./4 of N. E./4 of N. E./4 of Sec. 6; the E./2 of S. E./4 of N. W./4 of Sec. 6; the N. W./4 of N. E./4 of S. W./4 of Sec. 6; the N./2 of N. E./4 of S. W./4 of Sec. 6; and the N./2 of S. E./4 of S. W./4 of Sec. 6; the N. E./4 of S. W./4 of S. W./4 of Sec. 6, Tp. 3 S. R. 7 E.

To have and to hold the aforegranted lands unto the said J. S. Mullen and L. V. Mullen, their heirs, executors and administrators and assigns forever, together with all and singular the appurtenances, privileges and hereditaments thereunto belonging or in any wise appertaining, and I do and my heirs, executors, administrators and assigns, hereby covenant, with them, the said J. S. Mullen and L. V.

Mullen, their heirs, legal representatives, and assigns that I am lawfully seized in fee of the aforegranted lands; that the same are free and clear of all incumbrances, and that as one of the adult heirs of the said Eliza Bell, deceased, I have a perfect and legal right to sell the aforegranted lands; and I do and my heirs, executors and legal representatives hereby warrant the title thereto, unto the said J. S. Mullen and L. V. Mullen, their heirs and assigns, and agree to defend the same against all persons whomsoever.

That I further warrant and covenant with the said J. S. Mullen and L. V. Mullen and W. M. Bonner, that if, for any reason
26 the allotment of the said Eliza bell, deceased, as described be cancelled, set aside and held for naught, and afterwards be filed at any point in the Choctaw or Chickasaw county, that this deed and its warranties and covenants, shall apply to said lands so hereafter selected the same as if it were described in this instrument, and if it be necessary for me to hereafter execute the deed to the lands so selected, I hereby covenant and warrant to the said J. S. Mullen and L. V. Mullen and W. M. Bonner, their heirs, legal representatives, and assigns that I will so execute said deed.

In witness whereof, I hereunto affix my hand on this 23rd day of September, A. D. 1905.

MALINDA PICKENS.

Attest:
D. RUSSELL.
MARY L. BAKER.

UNITED STATES OF AMERICA,
Central District, Indian Territory:

Be it remembered, that on this 23rd day of September, 1905, personally appeared before me the undersigned notary public duly commissioned and acting within and for said District and Territory, Melinda Pickens, to me well known as being the person whose name is affixed to the foregoing instrument of writing and in the absence of her husband, Nelson Pickens, acknowledged to me that she had of her own free will and without any undue influence upon the part of her said husband, executed the same for the purposes and considerations therein mentioned and set forth as her own voluntary act and deed.

In witness whereof, I have hereunto set my hand on the day and year mentioned.

[SEAL.]

MARY L. BAKER,
Notary Public.

My commission expires Jan. 20, 1909.

27 Exhibit "B" attached to said Petition of the plaintiff is in words and figures as follows, to-wit:

"EXHIBIT B."

STATE OF OKLAHOMA,
Carter County, ss:

I, F. M. Adams, being first duly sworn upon oath state; that; I have examined the deed signed by Malinda Pickens, grantor to J. S. Mullen, L. V. Mullen and W. M. Bonner, grantees, conveying the lands of Eliza Bell, deceased; and that said deed conveyed the following described lands, to-wit: S. E./4 of N. W./4 of N. W./4 of Sec. 34 Tp. 4 S. R. 2 W. and N. E./4 of S. W./4 of N. W./4 of Sec. 32, Twp. 2 S. R. 2 W. less 2.50 acres for the town of Graham; and S. W./4 S. E./4 Sec. 31; S./2 of N. W./4 of S. E./4 of Sec. 31; and N. E./4 N. W./4 of S. E./4 Sec. 31; Twp. 2 S. R. 1 E. and N./2 of N. E./4 of N. E./4 of Sec. 6 of S. W./4 N. E./4 of N. E./4 of Sec. 6; and E./2 of S. E./4 of N. W./4 of Sec. 6; and N. W./4 of N. E./4 of S. W./4 of Sec. 6; and N./2 of N. E./4 of S. W./4 of Sec. 6; and N. W./2 of S. E./4 of S. W./4 of Sec. 6 and N. E./4 of S. W./4 of S. W./4 of Sec. 6 Tp. 3 S. R. 1 East of the Indian Meridian.

I further state that there is a provision in said deed providing as follows: If for any reason the allotment of the said Eliza Bell deceased, as described, be cancelled set aside and held for naught and afterwards be filed at any point in the Choctaw or Chickasha Country, then this deed and its warranties and covenants shall apply to said lands so hereinafter selected the same as if it were described in this instrument, and if it be necessary for me to here*in*after execute a deed to the land so selected I hereby covenant and warrant to the said J. S. Mullen, L. V. Mullen and W. M. Bonner, their heirs, legal representatives and assigns, that I shall so execute said deed" which said deed was recorded in recording District No. 21, of the Indian Territory, on the 10th day of March, 1906, at 8 o'clock A. M. and
28 duly recorded in Book 31, on page 376 at Ardmore.

I further state that I have examined the original patents issued in the name of Eliza Bell, and that there was allotted to Eliza Bell, the following described lands, to-wit:—

North 5.33 acres Lot 17 and North 14.69 acres and southeast 10 acres of Lot 13 and east 20 acres of Lot 14 of Sec. 30, and S. W./4 of N. W./4 of N. W./4 and W./2 of S. W./4 of N. W./4 and N. W./4 of N. W./4 of S. W./4 and S./2 of N. W./4 of S. W./4 of Sec. 29, Tp. 5 North, Range 7 West; and S. E./4 of N. W./4 of N. W./4 of Sec. 34 Tp. 4 South, Range 2 West and N. E./4 of S. W./4 of N. W./4 less 2.50 acres for townsite of Graham. Sec. 32 Tp. 2 South, Range 2 West, and S. W./4 of S. W./4 and W./2 of S. E./4 of S. W./4 of Sec. 29, Tp. 5 N. R. 7 West and S. E./4 of S. E./4 of S. E./4 less 1.62 acres, right of way of Sec. 22 Tp. 2 North, Range 2 West, and W./2 of S. W./4 of S. W./4 of N. W./4 of Sec. 25, Tp. 1 South Range 2 West and S. W./4 of N. W./4 of N. W./4 and S./2 of N. E./4 of N. W./4 of Sec. 23, Tp. 8 South,

Range 2 West and East 20 acres Lot 1 and east 10 a. lot 2 Sec. 7, Twp. 9 South, Range 2 East.

Portion of which land was in lieu of that originally selected in the name of Eliza Bell deceased.

F. M. ADAMS.

Subscribed and sworn to before me this October 29, 1912.
[SEAL.]
W. DUNLAP.

My commission expires Jan. 11, 1915.

Said Petition of the plaintiff is endorsed on back as follows: No. 3245. In the District Court in Grady County. Malinda Pickens & Frances Bell, Plaintiffs, vs. Will Trout, J. S. Mullen, L. V. Mullen and W. M. Bonner, Defendants. Petition. Filed Mar. 11, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla.

29 And be it remembered that præcipes for summons were thereupon duly filed in said cause, and the summons to said defendants were thereupon issued: Which said Summons were thereafter in due time returned showing service upon each and all of said defendants.

And be it remembered that on the first day of April, 1913, the defendants, and each of them, filed in said cause their Answer and Cross Petition to the Petition of the plaintiff; which said Answer and Cross Petition of the defendants is in words and figures as follows, to-wit:

In the District Court of Grady County, Oklahoma, at Chickasha.

No. —.

MALINDA PICKENS & FRANCES BELL, Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN, and W. M. BONNER, Defendants.

Answer.

Comes now the defendants Will Trout, J. S. Mullen, L. V. Mullen and W. M. Bonner, and for answer to the Petition of the Plaintiff filed herein deny, each and every, all and singular the allegations therein contained.

1. Further answering and by way of cross-petition these defendants say: that the lands sued for by plaintiff is that land allotted to Eliza Bell, deceased, in lieu of S. W./4 S. E./4 Sec. 31, S./2 N. W./4 S. E./4 Sec. 31 and N. E./4 S. W./4 Sec. 31, Tp. 2 S. R. 1 East; and N./2 of N. E./4 N. E./4 and S. W./4 N. E./4 N. E./4 Sec. 6 and E./2 of S. E./4 N. W./4 Sec. 6 and N. W./4 N. E./4 S. W./4 Sec. 6 and N./2 N. E./4 S. W./4 Sec. 6 and N./2

S. E./4 S. W./4 Sec. 6 and N. E./4 S. W./4 S. W./4 Sec. 6 Tp. 3 So. R. 1 East, which said last described land was selected in allotment by F. A. Bonner as administrator of the estate of Eliza Bell, deceased, which said last described land Malinda Pickens conveyed by warranty deed to the defendants J. S. Mullen, L. V. Mullen and W. M. Bonner, for which said land the defendants paid the sum of $520.00; and in which said deed of conveyance from the said Malinda Pickens to the said J. S. Mullen, L. V. Mullen and W. M. Bonner, the said Malinda Pickens to J. S. Mullen, L. V. Mullen and W. M. Bonner covenanted and warranted as follows:

"If for any reason the allotment of the said Eliza Bell deceased, as described, be cancelled, set aside, and held for naught and afterwards be filed at any point in the Choctaw and Chickasaw Country, then this deed and its warranties and covenants shall apply to said lands so hereinafter selected the same as if it were described in this instrument, and if it be necessary for me to hereafter execute a deed to the land so selected I hereby covenant and warrant to the said J. S. Mullen, L. V. Mullen, and W. M. Bonner, their heirs, legal representatives and assigns, that I shall so execute said deed.

2. Defendants say that at the time of the execution of said conveyance as of date September 23rd, 1905, that the said Malinda Pickens was a citizen of the United States and entitled to all of the rights and privileges as such citizen, and that she was at that time an unrestricted Indian and that the lands described in said conveyance were unrestricted lands.

3. The defendants further say that the lands first described herein were lost in contest proceedings, and that the lands described in plaintiff's petition were selected in lieu of the lands described in said deed of conveyance as of date September 23, 1905, and that by reason of the covenants in said deed of conveyance, of date September 23, 1905, these defendants are entitled to a conveyance from said Malinda Pickens conveying to them the lands described in plaintiff's said Petition.

4. Further answering these defendants say that Malinda Pickens and Frances Bell have no right, title claim or interest in and to said lands as against the defendants or either of them, nor are they entitled to any damages against these defendants.

5. Further answering these defendants say that Frances Bell, and Malinda Pickens, joined by her husband Nelson Pickens executed a deed, which deed was to R. H. Mitchell, which deed was approved by the County Judge of Pittsburg County October 20th, 1912, which order of approval as filed for record Nov. 7th, 1912, and recorded in book 104 page 114 of the records of Grady County, Oklahoma. By reason of which said R. H. Mitchell is a necessary party plaintiff of this suit.

Now having fully answered these defendants pray that the plaintiffs take nothing by their said Petition, and that these defendants have judgment against Malinda Pickens decreeing the specific performance of said contract as of date September 23rd, 1905, and that the conveyance made by Frances Bell and Malinda Pickens, as ap-

proved by the County Court, of Pittsburg County be cancelled, set aside and held for naught, and for all other relief to which they may be entitled.

H. A. LEDBETTER,
Attorney for Defendants.

STATE OF OKLAHOMA,
Carter County, ss:

I, J. S. Mullen, being first duly sworn on oath state that I am one of the defendants in the above styled and numbered cause, and further state that I have read the above, within and fore-
32 going answer and that the matters, facts and things therein set forth and alleged are true.

Subscribed and sworn to before me this March 31, 1913.

_____,
Notary Public.

My commission expires Jan. 11, 1915.

Endorsed on back as follows: No. 3245. Malinda Pickens et al. vs. Will Trout et al. Answer and Cross Petition. Filed Apr. 1, 1913. S. L. Newman, Clerk of District Court, Grady County, Oklahoma, by Edna T. Watkins, Deputy. H. A. Ledbetter, Attorney for defendants.

And be it remembered that on the 8th day of April, 1913, the plaintiffs filed in said cause their Demurrer to the answer and cross petition of the defendants; which said Demurrer is in words and figures as follows, to-wit:

33 In the District Court of Grady County, State of Oklahoma.

MALINDA PICKENS & FRANCES BELL, Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN AND W. M. BONNER, Defendants.

Demurrer.

Comes now the plaintiffs herein and demur to the Answer of the Defendants herein filed for the reason that if the facts therein alleged are taken as true they do not constitute a defense to plaintiffs' cause of action.

Said Plaintiffs specially demur to that portion of paragraphs one, two, three and four of said Answer which attempt to allege title to the lands in controversy to be in Defendants by reason of a purported deed given by Malinda Pickens on September 23rd, 1905, for the reason that said deed shows on its face that it is void as to said lands

in controversy, being given in direct violation of Acts of Congress then in force.

KENT V. GAY,
A. S. ARNOLD,
Attorneys for Plaintiffs.

Endorsed on the back as follows: No. 3245. In the District Court in Grady County. Malinda Pickens and Frances Bell, Plaintiffs, vs. Will Trout, J. S. Mullen, L. V. Mullen and W. M. Bonner, Defendants. Demurrer. Filed Apr. 8, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla. Kent V. Gay, McAlester, Okla. Attorney for Malinda Pickens and Frances Bell.

34 And Be It Remembered that on the 16th day of September, the defendants filed in said cause their Supplemental Answer and Cross Petition, the same being in words and figures as follows, to-wit:—

In the District Court of Grady County, Oklahoma.

MALINDA PICKENS AND FRANCES BELL, Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN AND W. M. BONNER, Defendants.

Amended and Supplemental Answer and Cross-Petition.

Comes now the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner, and not waiving, but replying upon a former Answer and cross-petition filed herein, but as supplemental thereto, and by way of cross-petition, alleges and says that R. L. Glover and T. E. Glover are necessary parties to the final determination of the above cause; that they are residents of Grady County, residing on the lands in controversy in this cause

Defendants allege that the said R. L. Glover went on and in possession of said lands as the tenant of these defendants; that without delivering up possession thereof, he is asserting some right, title, claim or interest in and to said lands, and refuses to pay rent for the use and occupation of said lands, and refuses to attorn to these defendants, and these defendants say that the right, title, claim and interest of the said R. L. Glover, and which he is attempting to set up, if any he has, is adverse and inferior to the right, title
35 claim and interest of these defendants, except that the said R. L. Glover went into possession of said lands as the tenant of these defendants, and that these defendants have no contract with the said R. L. Glover, but the said R. L. Glover fails and refuses to recognize these defendants as landlord and fails to and refuses to pay these defendants *and* rents on said lands.

Now these defendants say that the reasonable rental value of said

lands is the sum of $300.00 per year; that a major portion of said lands is in a state of cultivation and are income bearing; that unless a Receiver is appointed to preserve the rents, revenues and profits of said lands, the same are liable to be lost; that according to the information and belief of defendants, the said R. L. Glover is insolvent and unable to respond in damages; that defendants have no plain, adequate and complete remedy at law.

Wherefore defendants pray that the court permit the said R. L. Glover and T. E. Glover to be made parties defendant in this cause; that summons issue as provided by law, and that upon final trial hereof, these defendants have judgment against the said R. L. Glover and T. E. Glover for the sum of $300.00; that the court appoint a receiver, pending the determination of this cause, to take charge of the rents, revenues and profits from said lands, and of said lands, and rent the same out according to his own judgment; that the said R. L. Glover be required to set up his interest in said lands, and that upon final hearing hereof, the said R. L. Glover be enjoined from assierting any right, title, claim or interest to the right, title, claim and interest to these premises adverse to the right, title, claim and interest of these defendants, and for such other and
36 further relief as defendants may show themselves entitled to receive in the premises.

MONROE OSBORNE,
F. M. ADAMS,
Attorneys for Defendants.

STATE OF OKLAHOMA,
County of Grady, ss:

J. S. Mullen, being duly sworn, on his oath states that he is one of the defendants in the above styled cause; that he has read the above and foregoing and that the matters and things therein set out are true.

J. S. MULLEN.

Subscribed and sworn to before me this 9th day of September, 1913.

[SEAL.]

E. DUNLAP,
Notary Public.

My commission expires, 1-11-15.

Endorsements on back as follows: No. 3245. In the District Court of Grady County, Oklahoma. Malinda Pickens, et al., Plaintiff, vs. Will Trout, et al., Defendants. Supplemental answer and cross petition and application to make R. L. Glover party defendant. Filed Sept. 16, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla.

And Be It Remembered that on the 13th day of September, 1913, the Court made the following order in said cause:

37 In the District Court of Grady County, Oklahoma.

MALINDA PICKENS et al., Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, et al., Defendants.

Order.

Now on this the 13th day of September, 1913, came on for hearing at chambers in Chickasha, the application of defendant J. S. Mullen for the appointment of a Receiver in the above styled cause, and the said J. S. Mullen appearing by attorney, and the defendant, R. L. Glover, D. T. Glover and —— —— appearing by attorney-, Bond & Melton; and after hearing the testimony introduced, and being well and sufficiently advised, the court is of the opinion that a receiver should be appointed.

Thereupon the said defendants pray the court to permit bond to discharge said receiver.

It is therefore ordered by the Court that C. W. Harper be and he is hereby appointed Receiver over the lands described in the petition filed herein, but if, within five days from this date, said defendants execute a good and sufficient bond conditioned for the payment of all rents that may be due for the year 1913 on said lands to the person entitled to receive the same, in the sum of $200.00, said bond to be approved by the Clerk of this court, said receiver shall be discharged.

FRANK M. BAILEY,
District Judge.

Endorsed on back as follows: No. 3245. Filed Sep. 18, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla. By Edna T. Watkins, Deputy. Recorded Journal 6, page 383.

38 And be it remembered that on the said 18th day of September, 1913, the defendants, T. E. Glover, R. L. Glover and Will Trout, filed in said cause their Bond to discharge the Receiver appointed by the Court in said, cause, which said Bond is conditioned as required by law and was on said 18th day of September 1913, duly approved by the Clerk of said Court

And be it remembered that on the 26th day of November, 1913; T. E. Glover filed in said cause his Motion to be made a party defendant, also his Answer, which said Motion to be made a party defendant is as Follows, to-wit:

STATE OF OKLAHOMA,
Grady County:

In the District Court.

MALINDA PICKENS and FRANCES BELL, Plaintiffs,
vs.
WILL TROUT et al., Defendants.

Motion of T. E. Glover to be Made a Party Defendant Herein.

Comes now, T. E. Glover and *and* says that he is in possession of a portion of the lands involved in this litigation and described in plaintiffs' petition, and that he is a necessary and proper party to the final determination of this cause, as shown by his answer herewith submitted.

Wherefore, he asks that this Court make and enter its order making *his* a party defendant herein, and that he be permitted to forthwith file his answer.

BOND & MELTON,
Attorneys for T. E. Glover.

39 Said answer of the Defendant T. E. Glover and of the Defendant Will Trout, being in words and figures as follows, to-wit:

STATE OF OKLAHOMA,
Grady County:

In the District Court.

MALINDA PICKENS and FRANCES BELL, Plaintiffs,
vs.
WILL TROUT et al., Defendants.

Answer of T. E. Glover and Will Trout.

Comes now, the defendants herein, and for answer to the Petition of the plaintiff- herein filed, says:

I.

These answering defendants admit that Malinda Pickens and Frances Bell are the owners of the lands described in plaintiff's petition, and admits that said lands were allotted to Eliza Bell, deceased, and that she was the mother of the plaintiffs.

II.

For further answer herein these defendants say that they deny that they are now in unlawful possession of said lands hereinabove

described, denies that they are due plaintiffs $1,000.00 rent as plead in the third paragraph in said petition.

III.

For further answer herein, defendants say that they had made and entered into a contract with C. W. Harper, the duly qualified and acting agent of the plaintiffs herein, for the purchase of
40 the lands described in said petition, and that said contract is now and has been during all of the times alleged in plaintiffs' petition in full force and effect; that they have at all times since entering into said contract been ready and willing to perform the same, but that said plaintiffs have been unable to deliver to these defendants the fee title to said lands free of all incumbrances by reason of a certain deed plead in plaintiffs' petition, and these answering defendants say that under said contract they are not liable to plaintiffs herein, for the rents upon said lands, and that they are in possession of the same under the plaintiffs' contract, and as to all of the other matters facts and things alleged and set up in said petition these defendants say that they are not informed and therefore demand proof.

Wherefore, these defendants having fully answered herein pray judgment of the Court.

BOND & MELTON,
Attorneys for Defendants
Will Trout and T. E. Glover.

Endorsed on back as follows: 3245. Malinda Pickens et al., vs. Will Trout et al. Separate Answer of Will Trout and T. E. Glover. Filed Nov. 26, 1913. S. L. Newman, Clerk District Court.

41 And be it remembered that on the 18th day of September, 1913, the court made an order in said cause making T. E. Glover a party defendant in said cause; which said order is as follows, to-wit:

STATE OF OKLAHOMA,
Grady County:

In the District Court.

MALINDA PICKENS and FRANCES BELL, Plaintiffs,

vs.

WILL TROUT et al., Defendants.

Order Making Additional Parties Defendant.

Now, on this the 18th day of September, 1913, came on for hearing the motion of T. E. Glover to be made a party defendant herein,

and having tendered his answer in this cause, and it appearing that he is a necessary — to the action.

Now, therefore it is hereby ordered that T. E. Glover be made a party defendant in this action.

FRANK M. BAILEY,
Judge of the District Court.

Endorsed on back: 3545. Malinda Pickens vs. Will Trout et al. Order. Filed Nov. 26, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla.

42 And be it remembered that on the 18th day of October, 1913, the court made an order and entered judgment in said cause sustaining the demurrer of the plaintiffs to the Answer and cross-petition of the defendants and rendering Judgment for the plaintiffs; which said order of the court is in words and figures as follows, to-wit:

In the District Court of Grady County, State of Oklahoma.

MALINDA PICKENS & FRANCES BELL, Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN, and W. M. BONNER, Defendants.

Journal Entry.

Now on this 18th day of October, 1913, the same being one of the regular judicial days of the October, 1913, term of said court, this cause came on to be heard upon the Demurrer of Plaintiffs to the Answer of Defendants J. S. Mullen, L. V. Mullen and W. M. Bonner, and said demurrer being heard and considered by the Court, it is by the Court sustained, to which ruling of the court the said defendants in open court except, and the said defendants declining to plead further and desiring to stand upon their Answer, the Court thereupon, upon motion of plaintiffs, rendered judgment for Plaintiffs as follows:

The Court finds, upon allegations of the Petition there being no other evidence offered, that the lands in controversy and hereinafter described were allotted in the name of Eliza Bell, a deceased member of the Choctaw Tribe of Indians; that said Eliza Bell departed this life intestate on February 12th, 1905, leaving surviving her as her sole heirs at law the Plaintiffs herein, Malinda Pickens and Frances Bell and that said plaintiffs are now the sole
43 owners of and entitled to the immediate possession of said lands which are thus described:

Situate in Grady County, Oklahoma and being the North Five and 33/100 acres of Lot No. 17 and the North 14.69 acres and the S. E. 10 acres of lot No. 13 and the east 20 acres of Lot No. 14 of Section 30 (Thirty); and the S. W./4 of N. W./4 of N. W./4 and the W./2 of S. W./4 of N. W./4 and N. W./4 of N. W./4 of S. W./4

and S./2 of N. W./4 of S. W. and S. W./4 of S. W./4 and W./2 of S. E./4 of S. W./4 of Section twenty nine (29), all in township Five (5) North, Range seven (7) West of the Indian Base and Meridian, containing 170.02 acres of land according to the United States Government Survey thereof.

It is therefore ordered, adjudged and decreed by the Court that the Plaintiffs, Malinda Pickens and Frances Bell, do have and recover of and from the defendants, Will Trout, J. S. Mullen, L. V. Mullen and W. M. Bonner and T. E. Glover the title and possession of said above described land for which they may have a writ of possession. It is further ordered, adjudged and decreed by the court that all cloud cast upon the title of the Plaintiffs by reason of a certain warranty deed from Malinda Pickens to the defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner, which is recorded in Volume 84 at page 426 in the office of the Register of Deeds for Grady County, Oklahoma, be and the same is hereby removed and said defendants and each of them are hereby barred and enjoined from further asserting any right, title, claim or interest in and to said lands or any part thereof. It is further ordered, adjudged and decreed by the Court that said plaintiffs have and recover of
44 and from the defendants, J. S. Mullen, L. V. Mullen, and W. M. Bonner all costs of this suit, for which let execution issue.

To which action of the court in sustaining said demurrer and rendering judgment for Plaintiffs and to such findings of fact and conclusions of law made by the court herein, said defendants, J. S. Mullen, L. V. Mullen and W. M. Bonner in open court excepts and give Notice of appeal to the Supreme Court of the State of Oklahoma; and the defendants are given sixty days from this date within which to prepare and serve casemade, and the Plaintiffs are given five days thereafter within which to suggest amendments and corrections thereto, same to be signed and settled upon ten days' notice by either party.

FRANK M. BAILEY,
Judge of the District Court of
Grady County, State of Oklahoma.

Endorsed on Back as Follows: No. 3245. In the District Court of Grady County. Malinda Pickens et al., Plaintiffs, vs. Will Trout et al., Defendants. Journal Entry. Filed Nov. 26, 1913. S. L. Newman, Clerk of District Court, Grady County, Okla. Recorded Journal 6, at page —. Kent V. Gay, McAlester, Oklahoma, Attorney for the Plaintiffs.

45 And be it remembered that on the 18th day of October, 1913, the defendants filed in said cause their Motion for a new trial, the same being as follows, to-wit:

In the District Court of Grady County, Oklahoma, at Chickasha.

MALINDA PICKENS et al., Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN, and W. M. BONNER, Defendants.

Motion for New Trial.

Now comes the defendants and file this their Motion for new trial herein, and as grounds therefor, state the following:

1st. The Judgment is contrary to the law.

2nd. The Judgment is contrary to the evidence.

3rd. The judgment is contrary to the law and the evidence.

4th. The court erred in sustaining the demurrer of the plaintiffs to the Answer of the defendants.

For all of which reasons, the defendants pray that the judgment entered herein be set aside and that they be granted a new trial.

H. A. LEDBETTER,
Attorney for Defendants.

Endorsed on Back as Follows: No. 3245. Malinda Pickens et al., Plaintiffs, vs. Will Trout et al., Defendants. Motion for New Trial. Filed Oct. 18, 1913. S. L. Newman, Clerk of District Court.

46 And be it remembered that on the said 18th day of October, 1913, the court made an order overruling the Motion of the defendants for a new trial and granting an extension of time within which to prepare and serve a case made in said cause which said Order of the court is as follows, to-wit:

Journal 6, page —.

In the District Court of Grady County, Oklahoma, at Chickasha.

MALINDA PICKENS et al., Plaintiffs,

vs.

WILL TROUT et al., Defendants.

Order Overruling Motion for New Trial.

On this the 18th day of October, 1913, came on for hearing the Motion of the defendants for a new trial and the court after hearing the same, is of the opinion that said Motion for new trial of the defendants should be overruled, and to which action of the court in overruling said Motion, the defendants in open court except, and which exceptions the court allows. And thereupon in open court,

the defendants ask for additional time, other that that prescribed by the statutes within which to prepare and serve their case made, and the court being of the opinion that additional time should be granted to prepare and serve their case made, it is therefore further ordered, adjudged and decreed by the Court, that the defendants be given 60 days from this date within which to prepare and serve their case made and the plaintiffs are given five days thereafter to suggest amendments and the case-made to be settled by either party upon five days' written notice.

47 FRANK M. BAILEY, *Judge.*

Endorsed on Back as Follows: No. 3245. Malinda Pickens et al., Plaintiffs, vs. Will Trout et al., Defendants. Order Overruling Motion for New Trial. Filed Oct. 18, 1913. S. L. Newman, Clerk of District Court. Journal 6, Page —.

The above and foregoing being a full, true, complete and correct record and copy of all the pleadings filed in said cause, all the orders, rulings, holdings and judgments of the court made and entered in said cause, all exceptions, and a full, true complete and correct case made in said cause.

48 In the District Court of the 15th Judicial District of the State of Oklahoma in and for Grady County.

No. 3245.

MALINDA PERKINS et al., Plaintiffs,

vs.

WILL TROUT et al., Defendants.

Certificate of the Clerk.

STATE OF OKLAHOMA,
County of Grady, ss:

J. S. L. Newman, Clerk of the District Court in and for Grady County, State of Oklahoma, hereby certify that the above and foregoing case made contains a full, true, complest and correct record, transcript and copy of all the pleadings filed in the above entitled cause, all the orders, rulings, holdings and judgments of the court made and entered in said cause, and all the proceedings had in said cause, all the evidence therein, and that the same is true and correct and I do so certify.

Given under my hand and the seal of said court on this the 19th day of January, A. D. 1914.

[SEAL.] S. L. NEWMAN,
Clerk District Court of Grady County, Oklahoma,
By EDNA WATKINS,
Deputy.

Certificate of Clerk.

49 In the District Court of the 15th Judicial District Within and for the County of Grady.

No. 3245.

MALINDA PICKENS et al., Plaintiffs,

vs.

WILL TROUT et al., Defendants.

Service of Case Made.

To Malinda Pickens, Frances Bell, Will Trout and T. E. Glover or Their Attorneys of Record:

You are hereby and herewith served with copy of the Case made in the above styled and entitled cause, whereby and wherein the above named defendants appeal from the orders, in the above styled and numbered cause, to the Supreme Court of the State of Oklahoma.

J. S. MULLEN,
L. V. MULLEN,
W. M. BONNER, AND
WILL TROUT,
By H. A. LEDRETTER,
Their Attorney of Record.

Service of copy of the above and foregoing case made is hereby acknowledged to have been made on the undersigned, on this the 15 day of December, A. D. 1913.

MALINDA PICKENS,
FRANCIS BELL, AND
T. E. GLOVER,
By KENT V. GAY,
C. S. ARNOLD, AND
BOND, MELTON & MELTON,
Their Attorneys of Record.

Service of case made.

50 In the District Court of the 15th Judicial District Within and for the County of Grady.

No. 3245.

MALINDA PICKENS & FRANCES BELL, Plaintiffs,

vs.

WILL TROUT, J. S. MULLEN, L. V. MULLEN, W. M. BONNER and T. E. GLOVER, Defendants.

Stipulation and Agreement of Counsel & Waiver.

It is hereby stipulated and agreed by and between the undersigned attorneys of record for the above plaintiffs and defendants, that the

above and foregoing case made contains a full, true, complete and correct record and copy of all the pleadings filed in said cause, all the orders, holdings, rulings and judgments of the court made and entered in said cause, and is a true and correct case made in said cause.

The parties hereto hereby waive the suggestion of further amendments to said case made and consent and agree that the Judge of said court may sign, settle and allow the foregoing as such true and correct case made without notice being given of the time and place of the settling and signing of same.

Given under our hands on this the 15 day of December, 1913.

KENT V. GAY &
C. S. ARNOLD,
BOND & MELTON,
Attorneys of Record for the Above-named Plaintiffs and T. E. Glover, Defendant.
H. A. LEDBETTER,
Attorney of Record for the Above-named Defendants Except T. E. Glover.

Stipulation and Agreement of Counsel.

51 In the District Court of the 15th Judicial District within and for the County of Grady.

No. 3245.

MALINDA PICKENS et al., Plaintiffs,

vs.

WILL TROUT et al., Defendants.

Certificate of the Trial Judge.

STATE OF OKLAHOMA,
County of Grady, ss:

I, Frank M. Bailey, Judge of the above entitled Court, hereby certify that I have examined the foregoing case made and find the same to contain a full, true, and complete copy of all the pleadings filed in said cause, all the orders, rulings, holdings and the judgment of the court made and entered in said cause, and that the same is a true and correct case made in said cause.

And it appearing that said case made was served within the time allowed by the court for such purpose and that the parties hereto have waived *and* the suggesting of further amendments to the same and have waived Notice of the time and place of signing and settling case made.

I now hereby sign, settle and allow the foregoing as such true and correct record and case made in said cause, and direct that the Clerk

of the above entitled court attest the same and file the same of record in the above entitled Court.

Done in Chamber-, in the City of Chickasha, and within said District, on this the 15th day of December, A. D. 1913.

FRANK M. BAILEY,
Trial Judge.

Attest:

[SEAL.] S. L. NEWMAN,
Clerk of the District Court, Grady County, Okla.

(Certificate of Judge.)

52 In the Supreme Court of the State of Oklahoma.

J. S. MULLEN, L. V. MULLEN, and W. M. BONNER and WILL TROUT,
Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Waiver of the Issuance of Summons in Error.

Comes now the defendants in error, by their attorneys of record, and hereby enter their appear*nace* in the above entitled cause in said Supreme Court, and hereby waive the issuance and service of Summons in Error in said cause in said Supreme Court.

This the 15 day of Dec. A. D. 1913.

MALINDA PICKENS,
FRANCES BELL, AND
T. E. GLOVER,
By KENT V. GAY,
C. S. ARNOLD, AND
BOND, MELTON & MELTON,
Their Attorneys of Record.

Filed Jan. 24, 1914. W. H. L. Campbell, Clerk.

Waive- of the Issuance of Summons in Error in the Supreme Court.

53 Thereafter, to-wit, on November 2nd, 1915, at the October, 1915, term thereof, the Supreme Court of Oklahoma made the following order:

No. 6020.

J. S. MULLEN et al.

v.

MALINDA PICKENS et al.

And now on this day it is ordered by the court that the above cause be set for oral argument on December 17th, 1915. It is fur-

ther ordered that Plaintiff in Error have until November 22nd, 1915, to file brief; and that defendants in error be granted until November 12, 1915, to file answer brief.

54 Thereafter, to-wit, on December 17th, 1915, at the October, 1915, term thereof, the Supreme Court of Oklahoma made the following order:

No. 6020.

J. S. MULLEN et al.

v.

MALINDA PICKENS et al.

And now on this day the above cause is argued orally and the cause is submitted, and it is ordered by the court that plaintiff in error be allowed 20 days to file reply brief, and defendant in error 10 days to file reply brief.

55 Thereafter, to-wit, on February 29th, 1916, at the January, 1916, term thereof, the Supreme Court of Oklahoma made the following journal entry order:

No. 6020.

J. S. MULLEN et al.

vs.

MALINDA PICKENS et al.

And now this cause comes on for final decision and determination by the court upon the record and briefs filed herein.

And the Court having considered the same finds that the judgment of the trial court in the above cause should be affirmed. *Upon* by Watts, C.

By the Court: It is so ordered, the opinion herein is hereby adopted in whole, and judgment is entered accordingly.

56 (Filed Feb. 29, 1916. William M. Franklin, Clerk.)

In the Supreme Court of the State of Oklahoma, Supreme Court Commission, Division No. 4.

No. 6020.

J. S. MULLEN et al., Plaintiffs in Error,

vs.

MALINDA PICKENS et al., Defendants in Error.

Syllabus.

A warranty deed from a restricted full-blood Choctaw Indian of September 23, 1905, whereby she conveyed all her interest in and to the theretofore selected allotment of her deceased mother, and which deed contained a provision: "That I further warrant and covenant with the said J. S. Mullen and L. V. Mullen and W. M. Bonner, that if, for any reason the allotment of the said Eliza Bell, deceased, as described be cancelled, set aside and held for naught, and afterwards be filed at any point in the Choctaw or Chickasaw country, that this deed and its warranties and covenants, shall apply to said lands so hereafter selected the same as if it were described in this instrument, and if it be necessary for me to hereafter execute the deed to the lands so selected, I hereby covenant and warrant to the said J. S. Mullen and L. V. Mullen, their heirs, legal representatives, and assigns that I will so execute said deed," did not by virtue of said provision, when subsequent thereto the selection of the land particularly described in the deed, was cancelled and annulled by the proper authorities, convey an equitable title to such after allotted land, concerning which, Malinda Pickens will be required to specifically perform. And where the pleadings show the above state of facts, it is not error for the court to sustain demurrer to the answer and award judgment for the plaintiff.

Error from the District Court of Grady County.

Frank M. Bailey, Judge.

Affirmed.

H. A. Ledbetter, Attorney for Plaintiffs in Error.

Kent V. Gay, and C. S. Arnold, Attorneys for Defendants in Error.

57 *Opinion of the Court.*

By WATTS, *C.*:

Defendants in error, Pickens and Bell, sued plaintiffs in error, J. S. and L. V. Mullin, W. M. Bonner, Will Trout and others in District Court of Grady County to clear title to and recover possession of certain real estate. The petition charges that Malinda Pickens and Frances Bell are enrolled as full-blood Choctaw Indians and

owners of the legal and equitable estate and entitled to immediate possession of certain real estate (omitting description), which was allotted to their mother, Eliza Bell, who died February 12th, 1905, leaving them as her sole heirs; that defendants were in unlawful possession collecting rents, and further charging that on October 30th, 1912, defendants had recorded in the office of the Register of Deeds of Grady County a warranty deed from Malinda Pickens to Mullen, Mullen and Bonner, executed September 23, 1905, copy of which was attached to the petition, and that also on October 30th, 1912, recorded in the office just mentioned an affidavit of F. M. Adams, which purported to construe the deed, a copy of the affidavit is attached to the petition; that said instruments were void and did not convey the land in controversy but were clouds on the title, praying judgment, etc. The deed attached is in the usual form but contained the following clause:

"That I further warrant and covenant with the said J. S. Mullen and L. V. Mullen and W. M. Bonner, that if, for any reason the allotment of the said Eliza Bell, deceased, as described be cancelled, set aside and held for naught, and afterwards be filed at any point in the Choctaw or Chickasaw country, that this deed and its warranties and covenants, shall apply to said lands so hereafter selected the same as if it were described in this instrument, and if it be necessary for me to hereafter execute the deed to the lands so selected, I hereby covenant and warrant to the said J. S. Mullen and L. V. Mullen, their heirs, legal representatives, and assigns that I will so execute said deed."

The affidavit shows among other things the description of the land contained in the deed, and also, description of the subsequent allotment, (same as in the petition) and that the deed was filed for record March 10th, 1906, in Recording District No. 21, Ind. Ter.

58 The answer charges the land sued for was the allotment of Eliza Bell, which was selected by her administrator in lieu of that described in the deed to Mullen, Mullen and Bonner and for which they paid $525.00, and in which the grantor agreed (same clause quoted above), and further charging that Malinda Pickens was a United States Citizen entitled to all the rights and privileges as such and at the date of the deed, the land was unrestricted; that the land described in the deed was lost in a contest proceeding and the land in controversy was selected in lieu thereof, and that by reason of the covenants of conveyance and provisions in the deed above quoted, defendants, Mullen, Mullen and Bonner, were entitled to conveyance from Malinda Pickens and that plaintiffs had no right, title, claim or interest to the land against them, praying that plaintiffs take nothing and they have judgment against Malinda Pickens for specific performance, as of September 23rd, 1905, etc.

The Court sustained a demurrer of Pickens and Bell to the answer and gave judgment for them, from which Mullen, Mullen and Bonner and Trout appeal.

As we understand from the oral argument of counsel, the only question for decision is, whether by the terms and conditions of the warranty deed from Malinda Pickens to J. S. and L. V. Mullen and

W. M. Bonner of date September 30th, 1905, conveying the land theretofore selected as the allotment of Eliza Bell, by operation of law, (in the event of the then selection being cancelled), thereby conveyed an equitable title to the after allotted land, concerning which, Malinda Pickens should be required to perform?

Case No. 5165, Robinson et al. v. Caldwell et al., not yet officially reported, but decided by this court on the 7th day of December, 1915, involves the same question as presented here. We have
59 carefully read and studied the briefs of counsel in the instant case but see no reason for changing our position. We therefore, follow any rely on Robinson et al. v. Caldwell et al., supra, and authorities therein cited as decisive of this case, to which reference is made for justification of the conclusions reached herein as well as therein.

We therefore hold that the deed from Malinda Pickens, a restricted full-blood Choctaw Indian of September 23, 1905, to J. S. and L. V. Mullen and W. M. Bonner, whereby she conv-yed all her interest in and to the theretofore selected allotment of her deceased mother, Eliza Bell, and which deed contained the provision (same as above set out), did not by virtue of said provision, when subsequent thereto the selection of the land particularly described in the deed, was cancelled and annulled by the proper authorities, convey an equitable title to such after allotted land, concerning which, Malinda Pickens will be required to specifically perform. And as the admitted pleadings show the above state of facts, it was not error for the court to sustain the demurrer to defendants' answer and award judgment for plaintiffs.

The judgment of the trial court should therefore be affirmed.

Feb. 29, 1916. By the Court: Adopted in whole.

60 *Certificate.*

I, William M. Franklin, Clerk of the Supreme Court of the State of Oklahoma, do hereby certify that the foregoing 59 pages numbered from 1 to 59, inclusive, *is* a true and complete transcript of the record and all proceedings in said Supreme Court in the case of L. V. Mullen et al., Plaintiffs in Error, vs. *Anderson Gardner* et al., Defendants in Error, No. *6240*, as the same remains of record and on file in this office.

In Witness Whereof, I hereunto set my hand and attach the seal of said Court at the City of Oklahoma City, this 2 day of March, A. D. 1917.

[Seal Supreme Court, State of Oklahoma.]

WILLIAM M. FRANKLIN, *Clerk,*
By N. C. ORR, *Assistant.*

Endorsed on cover: File No. 25811. Oklahoma Supreme Court. Term No. 145. J. S. Mullen, L. V. Mullen, W. M. Bonner and Will Trout, Plaintiffs in Error, vs. Malinda Pickens, Frances Bell and T. E. Glover. Filed March 8th, 1917. File No. 25811.